

REMARKS

The present application has been reviewed in light of the Final Office Action mailed November 24, 2009. Claims 1, 3, 9, 16, 17 and 20-22 are currently pending. Reconsideration of the present application is respectfully requested.

Claims 21 and 22 stand rejected under 35 U.S.C. § 112, first paragraph as failing to comply with the written description requirement. Specifically, the Examiner contends that the specification does not disclose that channels 30 are tapered. With reference to the excerpted portion of FIG. 3, reproduced below, channels 30 are shown having an opening on a proximal side of body 10 and a channel 30 extending substantially the length of each of the leg members to a point proximate a closed distal end thereof. As seen in FIG. 3, the width of channels 30 at the open proximal end is wider than the width of channels 30 at the closed distal end, i.e. channels 30 are tapered from the proximal end to the distal end of channel 30. As such, the recitation "wherein each of the central channels is substantially tapered along the length thereof" recited in Claims 21 and 22 is clearly supported in FIG. 3 of the application as filed. Applicants respectfully submit that the rejection of Claims 21 and 22 under 35 U.S.C. § 112, first paragraph is in error and should be withdrawn.

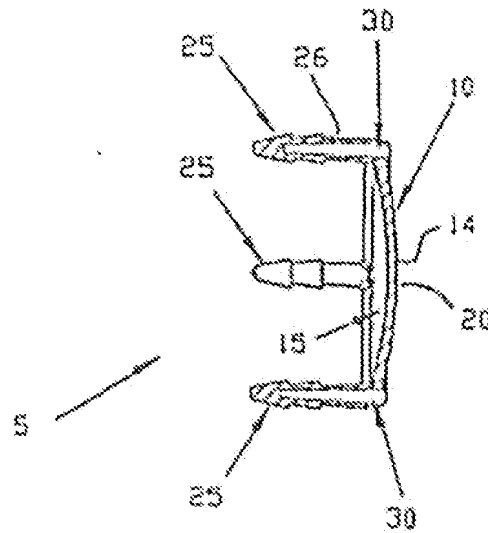


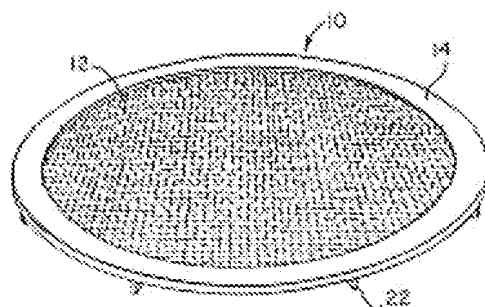
FIG. 3

Claims 1, 3, 9, 16, 17 and 20-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,267,772 to Mulhauser et al. (hereinafter "Mulhauser") in view of U.S. Pat. No. 4,776,328 to Frey et al. (hereinafter "Frey") and U.S. Patent No. 5,139,499 to Small et al. (hereinafter "Small"). Applicants respectfully traverse the rejections of Claims 1, 3, 9, 16, 17 and 20-22.

Claim 1 recites, an encapsulation device for the repair of an articular cartilage defect comprising, *inter alia*, an elongated leg structure comprising a plurality of elongated leg members ... each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending substantially the length of each of said leg members to a point proximate a closed distal end thereof. Claim 20 recites, a method for effecting a repair to an articular cartilage defect, the method comprising, *inter alia*, providing an encapsulation device comprising ... an elongated leg structure comprising ... legs, each leg

provided with a central channel therein, the channel being open on a proximal side of the frame member and extending substantially the length of each of said leg member to a point proximate a closed distal end thereof ....”

Mulhauser discloses an implantable prosthesis 10, shown in FIG. 2(a), reproduced below, for repairing and reinforcing a ruptured or defective muscle wall. Prosthesis 10 includes a pliable tissue infiltration fabric 12. Prosthesis 10 further includes spaced barbs 22 for preventing migration of the implant until tissue infiltration securely anchors prosthesis 10 to the rupture site. As conceded by the Examiner, Mulhauser fails to teach an anchor which includes a central channel that extends substantially the length of the anchor member.



*Fig. 2(a)*

The Examiner relies on Small to teach an anchor having a central channel configured for engaging a delivery device. With reference to Figs. 1 and 10, reproduced below, Small discloses a screw 20 including a thread extending the length thereof. Screw 20 includes a blind axial bore 26 which extends from a proximal end of screw 20 to a central portion of screw 20 and is configured to receive a distal end 66 of a driver 50. Bore 26 enables screw 20 to provide positive rotational engagement between screw 20 and driver 50. Screw 20 is configured to be rotationally received within a gap 106 formed between a bone plug 100 and the wall of a hole 102. In an alternative embodiment, screw 120 is configured to be received in a pilot hole 400 (Fig. 13 of Small).

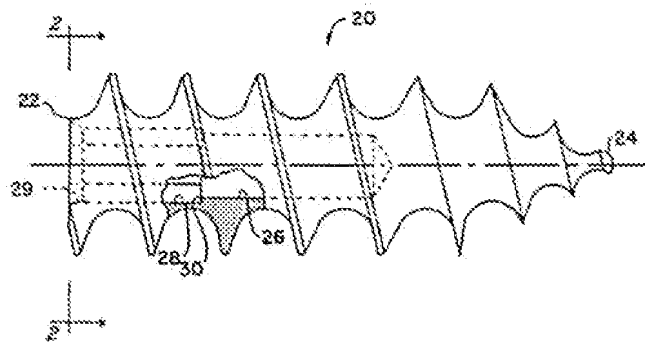


Fig. 1

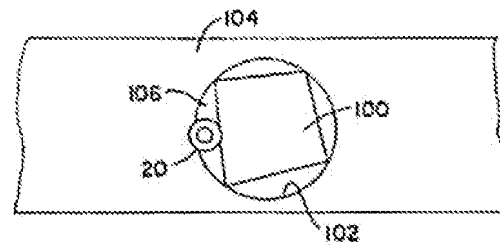


Fig. 10

Contrary to the Examiner's assertion, it would not have been obvious for one of ordinary skill in the art to modify the legs of the prosthesis of Mulhauser to include bore 30 of screw 20 of Small. As noted above, Small discloses a screw 20 for use as an anchor in hard tissue or bone and requires the presence of a pilot hole or gap for securement, while Mulhauser discloses a prosthesis 10 including barbs 22 for securing prosthesis 10 to soft tissue. Unlike the prosthesis of Mulhauser, which includes fixed anchor means, driving the screw of Small into tissue requires, 1) a pilot hole or gap, and 2) a positive engagement between the screw and the driver to facilitate rotatable insertion of the screw into pilot hole or gap. A person of ordinary skill of the art would not look to the screw of Small which is configured to be axially rotated into a prior formed opening for disclosure of a driver engagement interface for a device such as that disclosed by Mulhauser because barbs 22 of Mulhauser are, 1) fixed to semi-rigid frame 14, and thus, cannot be rotated, and 2) are configured for piercing soft tissue, and thus, are not configured for securement to bone.

Furthermore, in order to accommodate a channel extending substantially a length of the barb, as proposed by the Examiner, without compromising the integrity of the barb, the diameter of the barb would have to be increased. A barb of increased diameter would render the

prosthesis of Mulhauser inoperable for its intended purpose, namely, piercing soft tissue to prevent the migration of the implant prior to tissue infiltration.

Additionally, even if one were to incorporate bore 26 of Small into the barbs 22, the bore still would not extend "substantially the length of each of the leg members to a point proximate a closed distal end thereof," as recited in Claim 1 and 20. Therefore, any proper combination of the cited references fails to disclose the device of Claim 1 and the method of Claim 20. Thus, Applicants submit that Claims 1 and 20 are in condition for allowance.

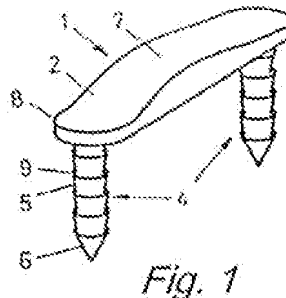
Since Claims 3, 9, 16, 17 and 20-22 depend from independent Claim 1, and contain all the limitations of Claim 1, for at least the reasons discussed above with respect to Claim 1, Applicants submit that each of Claims 3, 9, 16, 17 and 20 is also in condition for allowance.

Claims 1, 3, 9 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Pat. No. 6,187,009 to Herzog et al. (hereinafter "Herzog") in view of Small and Mulhauser. Applicants respectfully traverse the rejections of Claims 1, 3, 9 and 16.

Claim 1 recites, an encapsulation device for the repair of an articular cartilage defect comprising *inter alia*, an elongated leg structure comprising a plurality of elongated leg members..., said leg members each ... each of said leg members being provided with a central channel therein, each of the channels opening on a proximal side of said frame and extending substantially the length of each of said leg members to a point proximate a closed distal end thereof.

With reference to FIG. 1, reproduced hereinbelow, Herzog discloses an implant for joining bone fragments. The implant includes a body 1 and a pair of extensions 4 extending from body 1. Each of extensions 4 include outer surfaces 5 provided with retaining structure 9.

As conceded by the Examiner, Herzog does not disclose conical legs including a central channel that is closed at the distal end or an annular frame.



The Examiner relies on Mulhauser to teach an annular body for providing better structural support and on Small to teach an anchor having a central channel configured for engaging a delivery device. As discussed above with regard to the combination of Small and Mulhauser, a person of ordinary skill of the art would not look to the screw of Small, which is configured to be axially rotated, for disclosure of a driver engagement interface for use with the rigid implant of Herzog. In addition, neither Herzog nor Small disclose a bore that extends substantially the length of each of the leg members to a point proximate a closed distal end thereof. As discussed above, Mulhauser fails to cure the deficiencies of Small and Herzog with regard to claim 1. Therefore, any proper combination of the cited references fails to disclose the device of Claim 1. Thus, Claim 1 is believed to be in condition for allowance.

Since Claims 3, 9 and 16 depend from independent Claim 1, and contain all the limitations of Claim 1, for at least the reasons discussed above with respect to Claim 1, Applicants submit that each of Claims 3, 9 and 16 is also in condition for allowance.

In view of the foregoing, this case is believed to be in condition for allowance, such early and favorable action is being earnestly solicited.


Appl. No. 10/812,609  
Amendment dated January 22, 2010  
Reply to Final Office Action Mailed November 24, 2009

Should the Examiner believe that a telephone interview may facilitate resolution of any outstanding issues, the Examiner is respectfully requested to telephone Applicants' undersigned attorney at the number indicated below. Early and favorable consideration of the presently amended application is earnestly solicited.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 21-0550. Also, in the event any extensions of time for responding are required for the pending application(s), please treat this paper as a petition to extend the time as required and charge Deposit Account No. 21-0550 therefor.

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Respectfully submitted,

  
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